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# In the Supreme Court

OF THE

# United States

OCTOBER TERM, 1940

No. 749

WELLS FARGO BANK & UNION TRUST CO.,
*Petitioner and Appellant below,*

vs.

COLLECTOR OF INTERNAL REVENUE,
*Respondent and Appellee below.*

## PETITION FOR WRIT OF CERTIORARI
## To the Supreme Court of the Philippines
## and
## BRIEF IN SUPPORT THEREOF.

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*Respondent and Appellee below.*

## PETITION FOR WRIT OF CERTIORARI
**To the Supreme Court of the Philippines.**

*To the Honorable Charles Evans Hughes, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:*

Your petitioner respectfully shows:

### I.

### SUMMARY STATEMENT OF THE MATTER INVOLVED.

This is an action for declaratory judgment brought by the petitioner in the Court of First Instance of Manila, P. I., praying that judgment be rendered

declaring that the transfer by will of 35,000 shares of Benguet Consolidated Mining Company belonging to decedent, Birdie Lillian Eye, is not subject to Philippine inheritance taxes and may not validly be subjected thereto by the Philippine government, and further, that section 1536 of the Administrative Code of the Philippines, in so far as it may be construed as subjecting said shares to inheritance tax, is invalid and unconstitutional (Record, pages 1-5).

Birdie Lillian Eye died in California on September 16, 1932 (Record, page 47), being at the time of her death and for many years prior thereto a citizen of the United States and a resident of and domiciled in the State of California (Record, pages 47, 48). Decedent had a one-half community property interest, under the laws of the State of California, in 70,000 shares of Benguet Consolidated Mining Company (Record, page 53). The shares were acquired by Clyde Milton Eye, husband of said decedent, from his earnings during their married life, and were by written agreement dated October 15, 1926, expressly declared to be community property under the laws of the State of California (Record, page 53). Decedent's one-half community property interest in the 70,000 shares passed under her will, which was duly admitted to probate in the State of California, where her estate was administered and settled (Record, page 129). Clyde Milton Eye likewise was, and had been for many years prior to the death of Mrs. Eye, a resident of and domiciled in the State of California and a citizen of the United States (Record, page 445).

Estate taxes due to the United States on account of the shares as part of the estate of said decedent were paid (Record, pages 96, 100), as were the inheritance taxes levied thereon by the State of California (Record, pages 104, 105, 113, 116).

Benguet Consolidated Mining Company is an anonymous partnership (sociedad anónima) of the Philippine Islands (Record, page 129). At the time of Mrs. Eye's death, the shares were physically located in the Philippines (Record, page 60) in the possession of the Secretary of the company (Record, page 61). They stood in the name of Clyde Milton Eye, husband of the decedent (Record, page 61), were endorsed by him in blank (Record, page 62), but could not be disposed of except upon Mr. Eye's instructions (Record, page 62). They had been endorsed so that he could comply with the instructions of his wife (Record, page 62).

A trial was had before the Court of First Instance of Manila, sitting without a jury. The Court rendered judgment in favor of respondent, holding that the transfer of the shares was subject to the Philippine Islands succession tax imposed by section 1536 of the Administrative Code (Record, pages 121 to 127). An appeal was taken by petitioner to the Supreme Court of the Philippines (Record, page 128), which affirmed the judgment. The Supreme Court concluded that the statute validly imposed a succession tax on the transfer upon decedent's death of the shares in question (Record, pages 128 to 138). Petitioners moved for reconsideration of this judgment, which motion was denied (Record, page 146).

## II.

### STATUTORY PROVISIONS SUSTAINING JURISDICTION.

Jurisdiction to sustain this petition is found in Act of Congress of February 13, 1925, Chapter 229, section 7, 43 Statutes, 940; U. S. C. A., Title 28, section 349.

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## III.

### STATUTE INVOLVED.

The statute of the Philippines involved herein and in the proceedings before the Courts of the Islands is section 1536 of the Administrative Code (Act No. 2711, Philippine Legislature, 1917) reading in its only relevant part as follows:

> "Every transmission by virtue of inheritance, devise, bequest, gift *mortis causa* or advance in anticipation of inheritance, devise, or bequest of real property located in the Philippine Islands and real rights in such property; of any franchise which must be exercised in the Philippine Islands; of any shares, obligations, or bonds issued by any corporation or *sociedad anónima* organized or constituted in the Philippine Islands in accordance with its laws; of any shares or rights in any partnership, business or industry established in the Philippine Islands, or of any personal property located in the Philippine Islands shall be subject to the following tax * * *."

In connection with the question of construction of the statute hereinbefore referred to, there is likewise involved an amendment to this section, effective October 29, 1936: Commonwealth Act 106, which amended the first few words of section 1536 to read as follows:

> "Every transmission by a decedent, *whether a resident or nonresident,* by virtue of inheritance, devise, bequest, * * *."

The italicized words constitute the statutory amendment herein referred to.

The validity of section 1536 is to be measured by the provisions of the Fourteenth Amendment of the Federal Constitution, as incorporated in the organic laws of the Philippines in

> Philippine Autonomy Act of Congress, August 29, 1916, C. 416, § 3 (39 Stat. 546; U. S. C. A. Title 48, § 1008),

providing:

> "No law shall be enacted in the Philippine Islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws."

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## IV.

### JUDGMENT OF THE SUPREME COURT OF THE PHILIPPINES.

The judgment of the Supreme Court of the Philippines with respect to which this petition is brought was docketed by that Court on June 15, 1939, under G. R. No. 46720, and rendered on June 28, 1940 (Record, page 128); motion for reconsideration was made on July 12, 1940 (Record, page 138), and denied on August 6, 1940 (Record, page 146); the judgment was entered and became final and executory on August 10, 1940 (Record, page 153).

## V.

### QUESTIONS PRESENTED.

The questions presented by this petition are:

1. Whether the Supreme Court of the Philippines unreasonably and improperly construed section 1536 of the Administrative Code of the Philippines to include as subject to the succession tax imposed by that section the transfer upon death of the shares of an anonymous partnership of the Philippines owned by a decedent who was a resident of and domiciled in the State of California.

2. Whether section 1536 of the Administrative Code of the Philippine Islands, as construed to apply to the transfer upon death of shares in a Philippine anonymous partnership of a decedent who was a resident of and domiciled in the State of California, violates the constitutional safeguards of the Fourteenth Amendment of the Federal Constitution, incorporated in the organic law of the Philippines.

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## VI.

### REASONS RELIED ON FOR ALLOWANCE OF WRIT.

1. In construing the succession tax imposed by section 1536 of the Administrative Code as applicable to the transfer of shares in a Philippine anonymous partnership passing by the will of a decedent who was at the time of her death a resident of and domiciled in the State of California, and in upholding the validity

of the statute as so construed by it, the Supreme Court of the Philippines has decided a federal question of substance, which heretofore has not been determined by this Court, and has decided it in a way which is not in accord with the decisions of this Court most closely analogous.

2. In its construction of the statute, the Court unnecessarily put in issue the question of its validity. The determination that the statute applied to the transfer by will of shares of a Philippine anonymous partnership belonging to a decedent who was domiciled and residing in a State of the United States went beyond the words or necessary intendment of the statute and did violence to accepted doctrines of statutory construction, such as:

(a) That a statute be construed, if the language thereof reasonably permits, so as to avoid a possible violation of constitutional provisions;

(b) That a taxing statute be not assumed to operate extraterritorially; and

(c) That a statute prior to its amendment be not deemed to include the substance of the change made by the amendment.

The construction was so unreasonable and improper as to command the consideration of this Court, particularly as it gives rise to the question of the validity of the statute itself. Had the Philippine Court not construed the statute as applying to the transfer of shares owned by a decedent residing and domiciled in

the State of California, there would have been no need to determine the issue as to whether the statute as so construed violated due process.

3. The Court's construction does present the larger issue, namely, as to the power of the Philippine Islands to impose a tax on the transfer by death of shares in an anonymous partnership of the Philippines owned by a decedent who was a resident of and domiciled in a State of the Union at and for many years prior to the time of death. It is evident that a final determination should be had as to whether this statute, as construed by the Philippine Court, is in violation of the principles of the Fourteenth Amendment of the Federal Constitution, embraced in those statutes of the United States which constitute the organic law of the Philippines. There is thus squarely presented a case involving the Constitution and statutes of the United States within the meaning of section 7 of Chapter 229 of the Act of February 13, 1925, permitting these proceedings. This particular issue heretofore has not been passed upon by this Court. Decisions bearing the closest analogy are those denying the right of the State of incorporation to impose a similar succession tax upon the shares of such corporation passing by virtue of the death of a stockholder who resided and was domiciled in another State. The judgment of the Philippine Court is in direct conflict with the decision most nearly related:

*First National Bank of Boston v. Maine,* 284 U. S. 312, 76 L. ed. 313,

and is not determined, as the Courts of the Islands assumed, by either:

*Burnet v. Brooks,* 288 U. S. 378, 77 L. ed. 844,

or

*Curry v. McCanless,* 307 U. S. 357, 83 L. ed. 1339.

4. A further seemingly compelling reason for the review by this Court of the decision of the Supreme Court of the Philippines is the fact that this case unequivocably involves a question of outstanding general importance, namely, as to the power of the Philippine Islands, and the extent of such power, to tax debts and intangibles, having their source in the Islands, but owned by a person not residing or domiciled there, and who is in fact a citizen of the United States residing and domiciled in a State of the United States.

Wherefore, your petitioner prays that a writ of certiorari issue under the seal of this Court, directed to the Supreme Court of the Philippine Islands, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of said Supreme Court of the Philippines had in the case numbered and entitled on its docket, "G. R. No. 46,720, Wells Fargo Bank & Union Trust Co., Petitioner-Appellant, v. The Collector of Internal Revenue, Respondent-Appellee," to the end that this cause may be reviewed and determined by this Court, as provided for by the statutes of the United States, and that the judgment herein of the said Supreme

Court of the Philippines be reversed by this Court, and for such other and further relief as to this Court may seem proper.

Dated, San Francisco, California,
January 30, 1941.

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